



DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE

1100 Commerce Street
Dallas, TX 75242

501.03-00

**TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION**

Date: February 13, 2012

Release Number: **201225015**
Release Date: 6/22/2012

LEGEND

ORG - Organization name

XX - Date Address - address

ORG

ADDRESS

Person to Contact:

Badge Number:

Contact Telephone Number:

Contact Address:

Employer Identification Number:

CERTIFIED MAIL

Dear

This is a final adverse determination regarding your exempt status under section 501(c)(3) of the Internal Revenue Code (the Code). Our favorable determination letter to you dated May 15, 20XX is hereby revoked and you are no longer exempt under section 501(a) of the Code effective January 1, 20XX.

The revocation of your exempt status was made for the following reason(s):

You have failed to produce documents to establish that you are operated exclusively for exempt purposes within the meaning of Internal Revenue Code section 501(c)(3), and that no part of your net earnings inure to the benefit of private shareholders or individuals. Also, you have failed to keep adequate books and records as required by IRC section 6001 and the regulations there under. In our letters dated April 29, 20XX, May 18, 20XX, June 29, 20XX, August 17, 20XX, and September 9, 20XX, we requested information necessary to conduct an examination of your Form 990 for the year ended December 31, 20XX. We have not received all of the requested information.

Section 1.6033-2(h)(2) of the Income Tax Regulations provides, in part, that every organization which is exempt from tax, shall submit such additional information as may be required by the Internal Revenue Service for the purpose of inquiring into its exempt status. You have not provided the requested information.

Contributions to your organization are no longer deductible under section 170 of the Internal Revenue Code, effective January 1, 20XX.

You are required to file Federal income tax returns on Form 1120. These returns should be filed with the appropriate Service Center for the year ending December 31, 20XX, and for all the tax years thereafter in accordance with instructions of the return.

If you decide to contest this determination, you may file an action for declaratory judgment under the provisions of section 7428 of the Code in one of the following three venues: United States Tax Court, the United States Court of Federal Claims, or the United States District Court for the District of Columbia. A petition in one of these three courts must be filed before the 91st day after the date that this determination was mailed to you if you wish to seek review of our determination. Please contact the clerk of the respective court for rules regarding filing petitions for declaratory judgment by referring to the enclosed Publication 892. Please note that the United States Tax Court is the only one of these courts where a declaratory judgment action can be pursued without the services of a lawyer. You may write to the United States Tax Court at the following address:

Please understand that filing a petition for a declaratory judgment under IRC section 7428 will not delay the processing of subsequent income tax returns and assessment of any taxes due.

You also have the right to contact the Office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal Appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll free, 1-877-777-4778, and ask for the Taxpayer Advocate assistance. If you prefer, you may contact your local Taxpayer Advocate at:

Taxpayer Advocate assistance cannot be used as substitute for established IRS procedures, formal appeals processes, etc. The Taxpayer Advocate is not able to reverse legal or technically correct tax determination, nor extend the time fixed by law that you have to file a petition in Court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling.

This letter should be kept within your permanent records.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Nanette M. Downing
Director, EO Examinations

Enclosures:
Publication 892



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY

Internal Revenue Service
Mail Code 4900 DAL
1100 Commerce St.
Dallas, TX 75242

January 4, 2011

ORG
ADDRESS

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

Certified Mail - Return Receipt Requested

Dear

We have enclosed a copy of our report of examination explaining why we believe revocation of your exempt status under section 501(c)(3) of the Internal Revenue Code (Code) is necessary.

If you accept our findings, take no further action. We will issue a final revocation letter.

If you do not agree with our proposed revocation, you must submit to us a written request for Appeals Office consideration within 30 days from the date of this letter to protest our decision. Your protest should include a statement of the facts, the applicable law, and arguments in support of your position.

An Appeals officer will review your case. The Appeals office is independent of the Director, EO Examinations. The Appeals Office resolves most disputes informally and promptly. The enclosed Publication 3498, *The Examination Process*, and Publication 892, *Exempt Organizations Appeal Procedures for Unagreed Issues*, explain how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

You may also request that we refer this matter for technical advice as explained in Publication 892. If we issue a determination letter to you based on technical advice, no further administrative appeal is available to you within the IRS regarding the issue that was the subject of the technical advice.

If we do not hear from you within 30 days from the date of this letter, we will process your case based on the recommendations shown in the report of examination. If you do not protest this proposed determination within 30 days from the date of this letter, the IRS will consider it to be a failure to exhaust your available administrative remedies. Section 7428(b)(2) of the Code provides, in part: "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted its administrative remedies within the Internal Revenue Service." We will then issue a final revocation letter. We will also notify the appropriate state officials of the revocation in accordance with section 6104(c) of the Code.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Nanette M. Downing
Director, EO Examinations

Enclosures:
Publication 892
Publication 3498
Report of Examination

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit 1
Name of Taxpayer ORG		Year/Period Ended December 31, 20XX

LEGEND

ORG - Organization name XX - Date State - state DIR-1 & DIR-2 -
1st & 2nd DIR CO-1, CO-2 & CO-3 - 1st, 2nd & 3rd COMPANIES

Issue:

Whether ORG continues to qualify for exemption under Section 501(c)(3) of the Internal Revenue Code.

Facts:

The above named organization received exemption under 501(c)(3) of the Code on May 15, 20XX (Exhibit 2). The organization was formed to provide an after school riding program for underprivileged children from the local school.

The organization was initially contacted by telephone on August 5, 20XX and a field examination was tentatively scheduled for September 15, 20XX, pending the program director confirming the appointment. The taxpayer never called to re-confirm. On January 21, 20XX the taxpayer was again contacted (Exhibit 3). The organization did not have an active board and according to DIR-1, the executive director, the after school program had not been active since the spring of 20XX. Agent allowed the organization time to resurrect the board in order to make decisions regarding the organization.

As of April 29, 20XX, no response was received from the organization. Letter 3611 and Information Document Request (IDR) #1 (Exhibit 4) was sent to the organization. When no response was received from the organization by May 18, 20XX, Agent again called DIR-1 who confirmed receiving Letter 3611 and IDR #1. The board was still not formed at that time. Agent mailed IDR #2 (Exhibit 5) with a response due date of June 3. No response was received so IDR #2 was mailed again, certified, on June 29, 20XX with a response due date of July 13, 20XX.

IDR #3 (Exhibit 6) was mailed to the organization on August 17, 20XX with a due date of September 7, 20XX. No response was received and a follow-up letter was mailed on September 9, 20XX with a due date of September 24, 20XX. Again no written response was received. A third letter was mailed certified on October 14, 20XX. The response to IDR #3, initially mailed on August 17, was received on October 28.

The following information was requested in the IDRs but never received:

- Copies of Articles of Incorporation, including any amendments or changes that have occurred at the State level.

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Name of Taxpayer ORG		Year/Period Ended December 31, 20XX

- Board meeting minutes showing election of current officers
- Signed statement from the CO-1 that they will participate in the organization's program.
- A list of all activities in 20XX, including the date of the event/class, how many participants, names of workers and compensation amounts paid to them
- Complete contact information for the officers
- Current statement regarding Conflict of Interest procedures regarding the exclusive use of DIR-1's facilities and the related payments

The organization filed the Form 990-N e-postcard on May 24, 20XX, naming DIR-2 as an officer of the organization. Based on this filing, and the lack of a Board of Directors, DIR-2 was used as the primary contact.

Law:

IRC § 6001 provides that every person liable for any tax imposed by the IRC, or for the collection thereof, shall keep adequate records as the Secretary of the Treasury or his delegate may from time to time prescribe.

IRC § 6033(a)(1) provides, except as provided in IRC § 6033(a)(2), every organization exempt from tax under section 501(a) shall file an annual return, stating specifically the items of gross income, receipts and disbursements, and such other information for the purposes of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe, and keep such records, render under oath such statements, make such other returns, and comply with such rules and regulations as the Secretary may from time to time prescribe.

Treas. Reg. § 1.6001-1(a) in conjunction with Treas. Reg. § 1.6001-1(c) provides that every organization exempt from tax under IRC § 501(a) and subject to the tax imposed by IRC § 511 on its unrelated business income must keep such permanent books or accounts or records, including inventories, as are sufficient to establish the amount of gross income, deduction, credits, or other matters required to be shown by such person in any return of such tax. Such organization shall also keep such books and records as are required to substantiate the information required by IRC § 6033.

Treas. Reg. § 1.6001-1(e) states that the books or records required by this section shall be kept at all times available for inspection by authorized internal revenue officers or employees, and shall be retained as long as the contents thereof may be material in the administration of any internal revenue law.

Treas. Reg. § 1.6033-1(h)(2) provides that every organization which has established its right to exemption from tax, whether or not it is required to file an annual return of

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit 1
Name of Taxpayer ORG		Year/Period Ended December 31, 20XX

information, shall submit such additional information as may be required by the district director for the purpose of enabling him to inquire further into its exempt status and to administer the provisions of subchapter F (section 501 and the following), chapter 1 of the Code and IRC § 6033.

Rev. Rul. 59-95, 1959-1 C.B. 627, concerns an exempt organization that was requested to produce a financial statement and statement of its operations for a certain year. However, its records were so incomplete that the organization was unable to furnish such statements. The Service held that the failure or inability to file the required information return or otherwise to comply with the provisions of IRC § 6033 and the regulations which implement it, may result in the termination of the exempt status of an organization previously held exempt, on the grounds that the organization has not established that it is observing the conditions required for the continuation of exempt status.

In accordance with the above cited provisions of the Code and regulations under IRC §§ 6001 and 6033, organizations recognized as exempt from federal income tax must meet certain reporting requirements. These requirements relate to the filing of a complete and accurate annual information (and other required federal tax forms) and the retention of records sufficient to determine whether such entity is operated for the purposes for which it was granted tax-exempt status and to determine its liability for any unrelated business income tax.

Taxpayer's Position

The taxpayer's position is unknown at this time.

Government's Position

Treas. Reg. § 1.6001-1(e) states that the books or records required by this section shall be kept at all times available for inspection by authorized internal revenue officers or employees, and shall be retained as long as the contents thereof may be material in the administration of any internal revenue law. The organization did not provide complete books and records upon request.

- a. The organization did not provide original Articles of Incorporation
- b. The State of State website shows the organization was dissolved and reinstated at the State level (Exhibit 7). The organization did not provide any information regarding these changes.
- c. The organization provided copies of a document titled "Restated Articles of Incorporation". They are not copies filed with the State (no State stamp present).
- d. No Board meeting minutes were provided to show the election of officers.

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Name of Taxpayer ORG		Year/Period Ended December 31, 20XX

- e. The organization stated they were beginning operations again. Agent requested the local school provide a signed statement of their participation in the new program. This was not provided.
- f. The organization did not provide activity information as requested, including dates of classes, number of students, workers and related compensation.
- g. Only a partial list of officer contact information was provided.
- h. The organization did not provide current conflict of interest policies in place. The only information provided were documents submitted over three years ago with the Form 1023 application.

The organization did not provide any proof of elections of officers or board members. At this time there is no evidence that a board even exists. Without this election process it is unclear who is authorized to make financial and operational decisions on behalf of the exempt organization.

Treas. Reg § 1.6033-1(h)(2) provides that every organization which has established its right to exemption from tax, whether or not it is required to file an annual return of information, shall submit such additional information as may be required by the district director for the purpose of enabling him to inquire further into its exempt status and to administer the provisions of subchapter F (section 501 and the following), chapter 1 of the Code and IRC § 6033.

Agent was unable to complete a thorough review of the organization's books and records and is unable to verify they still qualify for exemption under 501(c)(3) of the Code. Originally, DIR-1 indicated the organization had not been active since the spring of 20XX. However, the financial statements showed payments being made to her for profit business through the end of the 20XX year. The organization did not provide the details of these payments as requested in Item 6, IDR #3.

There are several inconsistencies in their financial records. In the response received October 28, 20XX, the exempt organization states in response to Item 5 that the instructor fee is \$ weekly and the barn and horse fee is \$ weekly. Their financials provided in the same response show the actual instructor fee paid is \$ weekly and the barn and horse fee paid is \$ weekly. Payments for both instructor fees and the barn and horse fee are paid to CO-2 (CO-2), owned by DIR-1. The actual amounts paid to CO-2 are \$ more per week then stated by the exempt organization.

DIR-1 is the original incorporator and former director of the exempt organization. She is currently the program director of the after school program and is the owner of CO-2, the facilities used exclusively by the exempt organization. As shown in Exhibit 8 (attached) DIR-1's for-profit business is intertwined with ORG. Individuals interested in ORG must navigate through the CO-2 business website. As stated above, there are also discrepancies in the fees paid by ORG to DIR-1. The exempt organization also did not

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provide current conflict of interest policies as requested. Without this information, the Agent could not perform a thorough review of private benefit and inurement issues.

The cash disbursements statement for 20XX listed 6 payments totaling \$ paid to "CO-3" as "Instructor's Fees". Instructors Fees are for the teaching of the after school classes, it is unclear why this compensation was paid to a Home and Office business.

Conclusion

It is the Internal Revenue Service's position that the organization failed to meet the reporting requirements under IRC §§ 6001 and 6033 to be recognized as exempt from federal income tax under IRC § 501(c)(3). Accordingly, the organization's exempt status is revoked effective January 1, 20XX.

Form 1120 returns should be filed for the tax periods ending December 31, 20XX and forward.